The opinions in these cases are the basis for all the limitations to which the doctrine has been subjected, and as has been seen, their basis is attributable primarily to conservatism, rather than to a reasonable construction of the Act and the plain result to which its words must surely lead.

Judge SANBORN in the *Bertenshaw* case meets the question fairly, construes the wording reasonably, and arrives at the result which must in reason obtain as the settled law on this subject eventually. If a partnership is an entity for any purpose, why not for all purposes in bankruptcy? His opinion points clearly to the way of handling the further questions of final settlements and discharge, which is certainly more expedient and not less equitable than that arrived at in any other way. The converse of this question, as has been said, has been determined, and it is now established in the Third Circuit, that when all the members are adjudged bankrupt, but the partnership—the entity —is not so adjudged, the members' trustees cannot administer the partnership property. Is it consistent to say, when confronted by the converse of the same question, that when the partnership and some members are adjudged bankrupt, the trustee can administer the unadjudicated member's estate against his will?

It has been lately held that the solvency of one partner is no defense to a proceeding in involuntary bankruptcy against the partnership and the other partner, and in case the adjudication is made, though the solvent partner may be required to file schedules, yet he may, at his election, administer the partnership property under § 5h. *In re Solomon & Carvel,* 163 Fed. 140, citing the *Bertenshaw* case. This is clearly inconsistent with the former holdings in the *Meyer* and *Blair* cases, previously decided in the same Circuit. And the reason for this inconsistency, as well as all the other varying views, reduces itself to the single question: How far will the court go in applying the entity theory?

The *Meyer* case, as has been shown, gave life to the entity theory and then immediately curtailed its application. The *Bertenshaw* case went to the full extent and declared that the partnership is an entity from first to last for all bankruptcy purposes. By the weight of reason, and by the increasing number of later cases leaning toward the latter view, it seems that ultimately a partnership will be uniformly declared to be an entity as an entity, for all purposes in bankruptcy, and it will be definitely determined that the individual estate of an unadjudicated partner cannot be summarily subjected to administration by the partnership trustee. G. E. H.

PRESUMPTION IN FAVOR OF REPLY LETTERS.—That a reply letter will be presumed to be genuine and to have been authorized, even after proof that the signature is not in the alleged sender's handwriting, was held by the court in the recent case of *Capital City Supply Co.* v. *Beury* (W. Va. 1911) 72 S. E. 657. In that case, which was an action in assumpsit, the plaintiff sought to prove that the defendant had assumed personal responsibility for the debts of a corporation of which he was president. Two letters were introduced to prove the defendant's written promise to pay, but the court held

that only one contained a promise to pay. This letter came through the mail in due course, and was in reply to another letter written by the plaintiff to the corporation in care of the defendant, and related to a matter of which the defendant was supposed to have special knowledge. The letter was signed "Thos. C. Beury, L.," but it was proven by a witness that the signature was not in defendant's handwriting. Upon appeal by defendant, after judgment for the plaintiff, it was held that the letter was properly admitted, as the presumption of genuineness was not overcome by merely proving that the signature was not in the handwriting of the defendant but it should also have been made to appear that the signature was made without his authority.

Ordinarily a letter must be authenticated. *State* v. *Waite,* 101 Ia. 377; *Brown* v. *Massey,* 138 Mo. 519; *Peycke* v. *Shinn,* 68 Neb. 343. And a letter purporting to have been written to an agent by a third person at the instance of his principal is not admissible where there is no evidence that the principal authorized the writing of the letter. *Hargrove* v. *John,* 120 Ind. 285. But it is an almost universal rule that the arrival by mail of a reply purporting to be from the addressee of a prior letter duly addressed and mailed is sufficient evidence of the reply's genuineness to go to the jury. *Ovenston* v. *Wilson,* 2 C. & K. 1; *White* v. *Tolliver,* 110 Ala. 300; *City Nat. Bank* v. *Jordan,* 139 Ia. 499; *National Acc. Soc.* v. *Spiro,* 78 Fed. 774; *Loverin & Browne Co.* v. *Bumgarner,* 59 W. Va. 46. In 3 WIGMORE, EVIDENCE, § 2153, the author gives three circumstances which take this last class of letters out of the general rule; first, the tenor of the letter as a reply to the first indicates a knowledge of the tenor of the first; secondly, the habitual accuracy of the mails in delivering a letter to the person addressed and to no other person, indicates that no other person was likely to have received the first letter and to have known its contents; thirdly, the time of arrival, in due course, lessens the possibility that the letter, having been received by the right person but left unanswered, came subsequently into a different person's hands and was answered by him; and to this may be added the empirical argument that in usual experience the answer to a letter is found in fact to come from the person originally addressed.

But in the principal case it was proven that the signature was not made in the defendant's handwriting. Upon this point WILLIAMS, P., announcing the opinion of the court (although this point is doubted by BRANNON, J.) speaks as follows: "The question then arises, should the letter have been excluded? We do not think so. While we have not found any authority directly bearing on this point, we think the true rule is that, even though such a reply letter may not have been signed by the person whose name appears to it, still the presumption is that it was signed by proper authority; and the presumption of genuineness is not overcome by simply proving that he did not sign it himself, but it was necessary to go further and prove that he did not authorize the signing of it, or adopt the signature as his own. In these modern days of large and multiplied business, it is well known that much correspondence is carried on, and important business transacted, through dictations, made to clerks and stenographers, who take down the dictation and then transcribe it into longhand. It is also known that clerks employed in

offices of large business concerns are often directed to write the signature of their employers to their letters. It is scarcely to be supposed in the present case, in view of the subject matter in question, that Lewis, Mr. Beury's bookkeeper, would have either written the body of the letter, or signed Mr. Beury's name to it, without his authority. We think it is entirely within the rule relating to the presumed genuineness of reply letters purporting to come from the addressee of another letter, in due course of mail, to include the authority to sign the name which appears to it. It was therefore not enough to overcome the presumption of the genuineness of the letter to prove simply that the signature was not in the handwriting of Mr. Thomas C. Beury. It should also have been made to appear that the signature was made without his authority."

While there is no authority directly in point, the decision of the court would seem to be sustained by principle, and by the inferences to be drawn from the many cases holding that reply letters are presumed to be genuine. In *Hoxsie* v. *Empire Lumber Co.*, 41 Minn. 548, the court refers to *Melby* v. *Osborne,* 33 Minn. 492, and holds that a letter received by A, purporting to have been written by or for B, and in reply to a letter previously sent by A to B, is admissible in evidence against B, without proof of the handwriting, or of the authority of the person by whom it was written in behalf of B. In *Bloom* v. *State Ins. Co.,* 94 Ia. 359, it was held that letters written from the home insurance office to the insured are not inadmissible on the ground that no proof is offered of authority to write them in the persons by whom they were written, where they were in answer to letters to the company and were written on paper containing its letter heads, and part of them purported to be signed by the secretary and superintendent of the loss department: in this case no rebutting evidence was offered, but it was objected that it did not appear that the letters were written by any person authorized by defendant. In *Armstrong* v. *Advance Thresher Co.,* 5 S. Dak. 12, the court holds that a letter received by due course of mail, purporting to be written by the managing agent of a corporation, in reply to a letter addressed to the corporation and sent through the mail, is presumptively genuine and authorized, and is admissible in evidence without further proof that such person is the managing agent of such corporation, or that the letter was written by the party by whom it purports to be signed. A like doctrine was followed in the case of *Norwegian Plow Co.* v. *Munger,* 52 Kan. 371. Speaking of these last three decisions the court in the case of *Raleigh & Gaston R. Co.* v. *Pullman Co.,* 122 Ga. 700 said that these decisions appear to be a somewhat radical departure from the fundamental principles governing the law of evidence and agency, but it neither approved or disapproved the rulings, as it was not necessary in that case to express any opinion as to their soundness or unsoundness. In *Huber Mfg. Co.* v. *Claudel,* 71 Kan. 441, the genuineness of a reply letter was presumed, although signed in type, and in the case of *National Acc. Soc.* v. *Spiro, supra,* the reply letter was admitted where the signature was made with a rubber stamp. *Illinois Central R. Co.* v. *Messnard,* 15 Ill. App. 213, more nearly approaches the decision in the principal case. That was a suit for wages, and the defense was payment to appellee's wife upon appellee's written order.

The wife and a friend testified to the sending of a letter asking for such order, and to the receipt of a letter and the order in reply. The appellee, who was illiterate and unable to write, claimed that the order was forged but the court held that the evidence was sufficient to warrant the submitting of the paper to the jury, they to determine upon all the proof whether it was authentic or not; that while the contents of the letter were not competent, being a privileged communication between husband and wife, it was proper to show, by the friend at least, that the letter was sent by the wife, asking for the order, and that the reply came, enclosing it as stated.

It would seem both upon reason and authority that the presumption of authority in the agent of the sender in the case of reply letters rested upon the same grounds as the presumption of genuineness when the reply letter is written by the sendee of the previous letter, and the additional reason for this, given by the court in the principal case, is an important one. With the authority of the agent presumed, it is an easy and natural step to say that proof that signature is not in the handwriting of the principal, does not affect the presumption of the genuineness of the reply letter. For if the agent is authorized to sign the name of his principal, proof that the signature is not in the handwriting of the principal would have no weight in disproving that authority. And in the absence of further evidence against the genuineness of the letter and of the authority of the agent, the presumption of both genuineness and authorization would quite naturally stand. L. H. L.

A NOVEL CASE UPON THE QUESTION OF WHAT CONSTITUTES FORMER JEOPARDY.—A prisoner was put on trial for murder in the first degree, and his insanity at the time of trial was set up in defense; the jury was instructed by the trial judge to pass on both the questions of his guilt of murder and of his sanity at the time of trial. A verdict was returned (against the objection of defendant) that the prisoner was guilty of murder in the first degree and was insane at the time of trial; the jury was then discharged, and the prisoner was committed to an insane asylum. Later he was returned to the county prison by the superintendent of the insane asylum, who certified that he was sane and no longer in need of treatment; thereafter the court on its own motion set aside the verdict and granted a new trial (against the prisoner's objection). Now comes the question: Can the prisoner again be put on trial upon the same indictment, or does his former jeopardy entitle him to a discharge? This interesting situation arose recently in *Commonwealth* v. *Endrukat* (Pa. 1911) 80 Atl. 1049.

The court said, "though the question raised is a new one, the answer to it is old," and (after holding it proper to submit to the jury both the questions of guilt and insanity) said that a man insane at the time of trial can not be tried, which is true. *Reg.* v. *Berry,* 1 Q. B. D. 447; CLARK'S CRIM. LAW, p. 61, 4 BL. COM. 24; *State* v. *Pritchett,* 106 N. C. 667; and therefore (said the court in the principal case): "The verdict of guilty of murder of the first degree ought not to have been accepted by the court, but should have been treated as a nullity. * * * It was no trial at all on the charge against him,